

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRESTON D. VINES,

Plaintiff,

v.

LINDA SPECHT M.D.,

Defendant.

No. 10-02305 CW

ORDER GRANTING
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
DISMISSING
COMPLAINT

Plaintiff Preston D. Vines files an application for leave to proceed in forma pauperis (IFP). The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court grants the application to proceed IFP and dismisses the complaint.

DISCUSSION

A court may authorize a plaintiff to prosecute an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly, the application to proceed without the payment of the filing fee is granted.

The Court's grant of Plaintiff's application to proceed IFP, however, does not mean that he may continue to prosecute his complaint. A court is under a continuing duty to dismiss a case

1 filed without the payment of the filing fee whenever it determines
2 that the action "(i) is frivolous or malicious; (ii) fails to state
3 a claim on which relief may be granted; or (iii) seeks monetary
4 relief against a defendant who is immune from such relief." 28
5 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to
6 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an
7 exercise of the court's discretion under the IFP statute, the
8 dismissal does not prejudice the filing of a paid complaint making
9 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

10 Plaintiff makes the following allegations in his complaint.
11 Defendant Doctor Linda Specht put a computer chip in Plaintiff's
12 left knee. Plaintiff did not want her to do this. Plaintiff
13 requests that the Federal Bureau of Investigation take a cyber
14 forensic net picture of the chip because this is the only way to
15 obtain evidence of the chip's existence. Plaintiff is experiencing
16 pain and suffering because there are people dead in the United
17 States with computer chips in their bodies. Based on these
18 allegations, Plaintiff requests \$100,000,000 in damages.

19 Even construed liberally, Plaintiff's allegations fail to
20 state a claim upon which relief can be granted. Furthermore,
21 amendment would be futile. Therefore, the complaint is dismissed
22 without leave to amend.

23 IT IS SO ORDERED.

24 Dated: 6/29/2010



CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PRESTON D. VINES,
Plaintiff,

Case Number: CV10-02305 CW

v.

CERTIFICATE OF SERVICE

LINDA SPECHT M.D.,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 29, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Preston Daniel Vines
1919 Alice Drive
Vallejo, CA 94589

Dated: June 29, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California